No. 86-1462

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

EDWARD POTENZE, PATRICK J. LYNCH, JOHN ESPOSITO and HENRY ANKNER,

Petitioners,

—against—

NEW YORK SHIPPING ASSOCIATION, INC., INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO AND THE TRUSTEES OF THE GUARANTEED ANNUAL INCOME FUND OF THE NEW YORK SHIPPING ASSOCIATION, INC.-INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

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BRIEF IN OPPOSITION

The Guaranteed Annual Income ("GAI") plan in the Port of New York and New Jersey came into existence on April 1, 1966.[1] Its purpose was to ameliorate the effects of technological job displacement by guaranteeing a fixed

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[1] The program originated in the 1964-68 collective bargaining agreement between Respondents New York Shipping Association, Inc. and International Longshoremen's Association, AFL-CIO, the certified collective bargaining representatives for management and labor respectively.

minimum annual level of compensation for those longshoreman who were losing job opportunities because of the container revolution.[2]

From its inception, the GAI program paid benefits in an amount which, when added to wages and governmental benefits, such as unemployment insurance and workers' compensation, produced a total income equal to the guaranteed level. Initially, this safety-net level was fixed at an amount equal to what a longshoreman would earn if he worked 1,600 hours per year. In 1968, GAI was increased to the amount a longshoreman would earn working forty hours per week for a full year, or 2,080 hours.

At first, social security benefits were not taken into account in the GAI formula because a longshoreman receiving GAI was not eligible for that governmental benefit. In 1979, however, the Internal Revenue Service ruled that GAI payments are not wages subject to the tax prescribed by the Federal Insurance Contributions Act to fund social security benefits. Hence, GAI recipients became eligible for social security benefits. Social security benefits, like other governmental benefits, were then offset against GAI receipts to arrive at the safety-net level of compensation. Application of this offset, however, would have forced those GAI recipients from 62 to 65 years of age ("age-62 group") to elect to receive actuarially reduced social security benefits for life in order to maintain their income at the safety-

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[2] The GAI program's genesis was a recommendation by a special panel of the United States Department of Labor appointed by President John F. Kennedy. Reynolds, James J., Theodore W. Kheel and James J. Healy, *Recommendations on Manpower Utilization, Job Security and Other Disputed Issues for the Port of New York* (September 25, 1964) (available at the United States Department of Labor, Washington, D.C., document HD 803 L8U552).

net level.[3] Rather than impose this hardship, it was agreed that the social security offset would apply only to GAI recipients entitled to full, unreduced social security benefits —those 65 years of age or older.

Petitioners, four longshoremen over 65 years of age, claimed that the GAI plan provision offsetting social security benefits violated the Age Discrimination in Employment Act ("ADEA").

The Decisions Below

The district court concluded that the social security offset was not unlawful in and of itself. Petition (hereinafter "P.") at 21a.[4] However, in the opinion of the district court, the failure to apply the offset against longshoremen in the age-62 group constituted unlawful age discrimination.

The court of appeals disagreed. It ruled unanimously that not applying the offset to the age-62 group was an eminently reasonable provision of a bona fide employee benefit plan. If the offset provision were applied to that age group, it would force those employees "to accept lesser social security payments after age 65 (although economic detriment would be deferred until age 70 because of compensating GAI payments), or to accept lesser [GAI] benefits from age 62 to 65"—a result the court found unacceptable. P. at 8a.

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[3] The Social Security Law provides that a covered individual may elect to receive social security at age 62. However, the amount of the full benefit that would otherwise be payable at age 65 is reduced, and this reduction continues for the recipient's lifetime. 42 U.S.C.A. § 415 (West 1983 and 1986 Supp.).

[4] References to the decisions below will be to the appropriate pages of the appendix to the petition for certiorari.

Certiorari Is Unwarranted

The case does not pose any issue of national concern. It involved a unique employee benefit plan found in a single port in the Northeast. The court of appeals did not deviate from settled principles of law. It applied these principles to undisputed facts to arrive at a decision upholding the challenged GAI plan. In attempting to raise an issue worthy of review, petitioners do not fault the Second Circuit's real decision in this case—upholding the propriety of not applying the social security offset to the age-62 group. They instead take issue with the propriety of having any social security offset at all, even though both the district court (P. at 21a) and the court of appeals (P. at 7a) had no difficulty upholding the offset in general. Petitioners' quarrel with having any offset at all stems from their misunderstanding of the GAI program.

In petitioners' view, this case involves an employer taking a benefit away from older employees and not from younger employees. A proper understanding of the GAI program belies this misconception. No "benefit" is being taken away because there was never any right to the "benefit" in the first place. The GAI plan was set up to provide longshoremen with a safety net of minimum income. P. at 7a. It was expressly provided from the inception of the plan in the 1960's that governmental benefits would be offset from a recipient's GAI income. Longshoremen were never entitled to receive a fixed sum of money each year. Rather, each longshoreman, depending on the amount of his regular wages and governmental benefits, if any, is entitled to receive GAI in the amount that would provide him with a total income equaling the guaranteed level. If his wages and governmental benefits equal or exceed the guaranteed level in any given year, he is not

entitled to any GAI at all. Petitioners are wrong, then, when they claim that the plan provision at issue is one which "reduces" a longshoreman's GAI.

The two cases cited by petitioners (P. at 11) do not support petitioners' assertion of a conflict in the circuits. In both cases, the courts held that the benefits at issue were not part of a bona fide employee benefit plan. Petitioners concede that the GAI plan is. P. at 9. In both cases, the employers agreed to provide a certain benefit to the employees but excluded older employees from the benefit. In the instant case, there is no employee benefit (i.e., right to a fixed dollar amount) that was denied to older employees and no arbitrary age demarcation line.[5] The issue of age arises because social security is an age-related governmental payment. Obviously, a provision offsetting social security payments does not apply to younger employees ineligible for this governmental benefit.

It is clear that petitioners are attempting to raise an issue worthy of review where none exists. The decision below concerned the mechanics of a unique employee benefit plan in a single port. In upholding the plan, the court of appeals applied settled principles of law. There is thus no valid reason for Supreme Court review. The petition for certiorari has no substance and should be denied.

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[5] For this reason, petitioners' claim of a conflict with certain federal regulations (P. at 7-10) is equally unavailing.

Dated: New York, New York
April 7, 1987

Respectfully submitted,

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